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# **TITLE 3**

## **AGRICULTURAL COOPERATIVE ASSOCIATIONS**

### **Chapter**

#### **1. General Provisions Relating to Agricultural Cooperative Associations.**

### **CHAPTER 1**

## **GENERAL PROVISIONS RELATING TO AGRICULTURAL COOPERATIVE ASSOCIATIONS**

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## Section

3-1-41. Merger — Domestic or foreign corporations or associations — Plan of merger — Articles of merger — Certificate of merger.

### 3-1-1. Declaration of policy.

It is the declared policy of this state, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this act should be liberally construed.

**History:** L. 1937, ch. 2, § 1; C. 1943, 2-0-19.

**Meaning of "this act".** — The term "this act," referred to in this section, means Laws 1937, Chapter 2, which appears as §§ 3-1-1 to 3-1-29.

**Cross-References.** — Franchise and privilege taxes, exemption, § 59-7-105.

Nonprofit Corporation and Cooperative Association Act applicability, §§ 16-6-20, 16-6-108.

Produce Dealers' Act applicability, § 4-7-5.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations §§ 1 to 4, 276.

**C.J.S.** — 3 C.J.S. Agriculture § 138.

**Key Numbers.** — Agriculture ⇌ 6.

### 3-1-2. Definitions.

As used in this act, unless the context or subject matter requires otherwise:

(a) "Agricultural products" includes floricultural, horticultural, viticultural, forestry, nut, seed, ground stock, dairy, livestock, poultry, bee and any and all farm products.

(b) "Association" means a corporation organized under this act, or a similar domestic corporation, or a foreign association or corporation if authorized to do business in this state, organized under any general or special act as a cooperative association for the mutual benefit of its members, as agricultural producers, and which confines its operation to purposes authorized by this act and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this act for associations organized hereunder.

(c) "Domestic associations" means an association or corporation formed under the laws of this state.

(d) "Foreign association" means an association or corporation not formed under the laws of this state.

(e) "This act" means the "Uniform Agricultural Cooperative Association Act."

(f) Associations shall be classified as and deemed to be nonprofit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products.

(g) "Member" includes the holder of a membership of which there shall be but one class, in an association without stock and the holder of common stock in an association organized with stock.

(h) "Producer" means a person who produces agricultural products, or an association of such persons.

(i) "Person" includes an individual, a partnership, a corporation and an association.

(j) "Board" means the board of directors.

(k) "Articles" means the articles of incorporation.

**History:** L. 1937, ch. 2, § 2; C. 1943, 2-0-20.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations, §§ 1, 2.

**C.J.S.** — 3 C.J.S. Agriculture § 138.  
**Key Numbers.** — Agriculture ⇨ 6.

### 3-1-3. Qualifications of incorporators.

Five or more adult persons, engaged in agriculture or two or more associations of such producers, may form an association.

**History:** L. 1937, ch. 2, § 3; C. 1943, 2-0-21.

### 3-1-4. Purposes.

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

(a) producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing such products, or manufacturing or marketing the by-products thereof;

(b) seed and crop improvement, and soil conservation and rehabilitation;

(c) manufacturing, buying or supplying to its members and others, machinery, equipment, feed, fertilizer, coal, gasoline and other fuels, oils and other lubricants, seeds, and all other agricultural and household supplies;

(d) generating and distributing electrical energy and furnishing telephone service to its members and others;

(e) performing or furnishing business or educational services, on a cooperative basis, for or to its members;

(f) financing any of the above enumerated activities.

**History:** L. 1937, ch. 2, §4; C. 1943, 2-0-22.

### 3-1-5. Articles of incorporation.

Articles of incorporation shall be signed in duplicate by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the president and secretary if associations, before an officer authorized to take acknowledgments, such acknowledgment to state that it is bona fide their intention to commence and carry on the business specified in the articles, and



if natural persons, that each of them is an adult person. The articles shall state:

(a) The name of the association which may or may not include the word "cooperative." The corporate name shall not be the same as, nor deceptively similar to, the name of any association or corporation doing business in the state, unless the written consent of such other association or corporation, to the adoption of such name, is filed with the articles with the Division of Corporations and Commercial Code.

(b) Its purposes.

(c) Its duration.

(d) The location and post office address of its principal place of business in this state.

(e) The name and street addresses of each of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class or classes of shares for which each subscribes.

(f) The names of the first directors and their street addresses.

(g) The name and address of the registered agent.

(h) Whether organized with or without stock; and if organized with stock the total authorized number of par value shares and the par value of each share, and if any of its shares have no par value, the authorized number of such shares; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled. If only one class of stock is authorized, it shall be common, and if more than one class is authorized, one class shall be designated common stock, and, in any event, the common stock shall carry all voting rights.

(i) If organized without stock, whether the property rights and interest of each member are equal or unequal; if unequal, the rule by which such rights and interests shall be determined.

(j) The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent such districts and the members residing therein, for representation of each district upon the board of directors and for changing the number of directors to correspond to changes in the number of districts, and for the issuance, retirement, and transfer of memberships and stock.

**History:** L. 1937, ch. 2, § 5; C. 1943, 2-0-23;  
L. 1977, ch. 7, § 1; 1984, ch. 66, § 1.  
**Amendment Notes.** — The 1984 amend-

ment substituted "with the Division of Corporations and Commercial Code" for "in the office of the secretary of state" in Subsection (a).

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations §§ 30 to 32.

**C.J.S.** — 3 C.J.S. Agriculture § 140.  
**Key Numbers.** — Agriculture ☞ 6.

### 3-1-6. Filing articles of incorporation — Certificate of incorporation — Fees — Constructive notice.

(1) The articles of incorporation shall be filed with the Division of Corporations and Commercial Code, which shall thereupon issue a certificate of incorporation. This certificate or a certified copy of the same shall be prima facie evidence of the due incorporation of the association. Upon the issuance of such certificate of incorporation, the corporate existence begins.

(2) The Division of Corporations and Commercial Code shall establish a fee pursuant to Subsection 63-38-3(2) for filing articles of incorporation with the division, for securing a certified copy of the articles, for the issuance of a certificate of incorporation, and for filing amendments to the articles, whether incorporated with or without stock.

(3) No person dealing with the association may be charged with constructive notice of the contents of the articles or amendments thereto by reason of such filing or recording.

**History:** L. 1937, ch. 2, § 6; C. 1943, 2-0-24; L. 1961, ch. 3, § 1; 1977, ch. 7, § 2; 1984, ch. 66, § 2; 1984 (2nd S.S.), ch. 15, § 3.

**Amendment Notes.** — The 1984 amendment substituted references to "Division of Corporations and Commercial Code" for "secretary of state."

The 1984 (2nd S.S.) amendment, effective July 1, 1985, substituted provision for establishment of fees pursuant to Subsection 63-38-3(2) in Subsection (2) for specific fees; and made minor changes in phraseology, punctuation and style.

### 3-1-7. Amendments to articles of incorporation.

(a) An association may amend its articles of incorporation by the affirmative vote of a majority of the members voting thereon at any regular meeting, or at a special meeting called for the purpose. A notice of the proposed amendment and of the time and place of holding such meetings shall be published in a daily or weekly newspaper of general circulation in the territory in which the members reside, or in case the association publishes and distributes to the members, through the United States post office, a publication devoted to the interests of the association and issued at least once a month, such notice may be published therein, in lieu of publication in a general newspaper as aforesaid. If such notice is published in a general newspaper, the period thereof shall be not less than twenty-one days, if in a paper published by the association, then it must be published in at least two issues and for a period of at least thirty-six days. No amendment affecting the preferential rights of any outstanding preferred stock shall be adopted until the written consent of the holders of a majority of the outstanding preference shares has been obtained.

(b) After an amendment has been adopted, articles of amendment shall be prepared, in duplicate, setting forth the amendment and the adoption thereof, and shall be signed and sworn to by the president or vice-president and by the secretary or treasurer, and filed as in the case of original articles of incorporation.

**History:** L. 1937, ch. 2, § 7; C. 1943, 2-0-25; L. 1977, ch. 7, § 3.

### 3-1-8. Bylaws.

The members of the association shall adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. Bylaws may be adopted, amended or repealed, at any regular meeting, or at any special meeting called for that purpose, by a majority vote of the members voting thereon. The bylaws may provide for:

(a) the time, place and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum;

(b) the manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations;

(c) subject to any provision thereon in the articles and in this act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;

(d) the time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

(e) rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement, and transfer of stock, and the relative rights, interests and preferences of members and shareholders;

(f) penalties for violations of the bylaws; and

(g) such additional provisions as shall be deemed necessary for the carrying out of the purposes of this act.

**History:** L. 1937, ch. 2, § 8; C. 1943, 2-0-26.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

#### NOTES TO DECISIONS

##### **Resolution violating bylaw.**

A dairy association resolution levying a non-uniform assessment was void and of no effect where it was in violation of one of the associa-

tion's bylaws which required uniform assessment. *Merrill v. Cache Valley Dairy Ass'n*, 71 Utah Adv. Rep. 14 (1987).

#### COLLATERAL REFERENCES

**A.L.R.** — Cooperative associations: Validity and enforceability of bylaw amendment reduc-

ing benefits available to members, 61 A.L.R.3d 976.

### 3-1-9. Powers.

(I) An association formed under this act, or an association which might be formed under this act and which existed at the time this act took effect, shall have power and capacity to act possessed by natural persons and may do each and everything necessary, suitable or proper for the accomplishment of any one or more of the purposes, or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interests or benefit of the association, and may exercise all powers, rights, and privileges necessary or incident thereto, including the exercise of any rights, powers,

and privileges granted by the laws of this state to corporations generally, excepting such as are inconsistent with the express provisions of this act.

Special Authority.

(II) Without limiting or enlarging the grant of authority contained in Subdivision I of this section, it is hereby specifically provided that every such association shall have authority:

(a) to act as agent, broker, or attorney in fact for its members and other producers, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and other producers, and for subsidiary and affiliated association to property handled or managed by the association on their behalf;

(b) to make contracts and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association;

(c) to make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation or security;

(d) to establish and accumulate reasonable reserves and surplus funds and to abolish the same; also to create, maintain, and terminate revolving funds or other similar funds which may be provided for in the bylaws of the association;

(e) to own and hold membership in or shares of the stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing any of the products handled by the association; or, in financing its activities; and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon;

(f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require;

(g) to borrow money without limitation as to amount, and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge;

(h) to deal in products of, and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers shall not exceed fifteen per centum of the value of all its purchases. Business transacted by an association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume or value of member and nonmember business transacted by such association;

(i) if engaged in marketing the products of its members, to hedge its operations;

(j) to have a corporate seal and to alter the same at pleasure;

(k) To continue as a corporation for the time limited in its articles, and if no time limit is specified then perpetually;

- (l) To sue and be sued in its corporate name;
- (m) To conduct business in this state and elsewhere as may be permitted by law;
- (n) To dissolve and wind up.

**History:** L. 1937, ch. 2, § 9; C. 1943, 2-0-27.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations §§ 53, 54, 63.

**C.J.S.** — 3 C.J.S. Agriculture § 145.  
**Key Numbers.** — Agriculture ⇨ 6.

### 3-1-10. Members — Qualifications and liabilities — Voting rights.

(a) An association may admit as members only producers of agricultural products, including tenants and landlords receiving a share of the crop, and cooperative associations of such producers. The incorporators named in the articles are thereby made members of the association, and they shall pay for their membership or stock the same amount and in the same manner as may be required in the case of other members.

(b) No stockholder shall hold more than one share of the common voting stock.

(c) Under the terms and conditions prescribed in the bylaws, a member shall lose his membership if he ceases to belong to the class eligible to membership under this section, but he shall remain subject to any liability incurred by him while a member of the association.

(d) No member shall be personally liable for any debt or liability of the association.

(e) No member or stockholder shall be entitled to more than one vote and no vote shall be cast by proxy; provided, that where the member is a corporation, its vote may be cast by an accredited representative.

**History:** L. 1937, ch. 2, § 10; C. 1943, 2-0-28.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations §§ 42 to 45, 48 to 51, 55 to 57.

**C.J.S.** — 3 C.J.S. Agriculture §§ 141, 142.

**A.L.R.** — Liability of member or former

member of marketing or purchasing cooperative for its debts or losses, 96 A.L.R.3d 1243.

**Key Numbers.** — Agriculture ⇨ 6.

### 3-1-11. Certificates of and termination of membership — Dividends and distribution of reserves — Preferred stock — Certificates of interest.

(a) No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for his membership or stock.



(b) Dividends in excess of eight per centum per annum on the actual cash value of the consideration received by the association shall not be paid on common or preferred stock or membership capital, but dividends may be cumulative if so provided in the articles or bylaws.

(c) Savings in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage. The bylaws may provide that any distribution to a nonmember, eligible for membership, may be credited to such nonmember until the amount thereof equals the value of a membership certificate or a share of the association's common stock. The distribution credited to the account of such nonmember may be transferred to the membership fund at the option of the board, if, after two years, the amount is less than the value of the membership certificate or a share of common stock.

(d) The bylaws shall provide the time and manner of settlement of membership interests with members who withdraw from the association or whose membership is otherwise terminated. Provisions for forfeiture of membership interests may be made in the bylaws. After termination of membership, for whatever cause, the withdrawing member shall exercise no further control over the facilities, assets or activities of the association.

(e) An association may issue preferred stock to members and nonmembers. Preferred stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles or bylaws and printed on the stock certificates. Preferred stockholders shall not be entitled to vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of a majority of the preferred stock has been obtained. Payment for preferred stock may be made in cash, services, or property on the basis of the fair value of the stock, services, and property as determined by the board.

(f) The association may from time to time issue to each member a certificate of interest evidencing his interest in any fund, capital investment, or other assets of the association. Such certificate may be transferred only to the association, or to such other purchaser as may be approved by the board of directors, upon such terms and conditions as shall be provided for in the bylaws.

**History:** L. 1937, ch. 2, § 11; C. 1943, 2-0-29.

**Cross-References.** — Incorporation of cooperative association, § 16-6-108.

#### COLLATERAL REFERENCES

**A.L.R.** — Cooperative associations: Rights in equity credits or patronage dividends, 50 A.L.R.3d 435.

### 3-1-12. Meetings.

Within ninety days after the incorporation of an association the members thereof shall hold an organization meeting at a time and place fixed by the temporary board of directors. Not less than ten days' written notice thereof shall be given to each member. An association may provide in its bylaws for one or more regular meetings each year, which may be held within or without the state at the time and place designated in the bylaws. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when ten per centum of the members file with the

secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Notice of all meetings, except as otherwise provided by law or the articles or bylaws, shall be mailed to each member at least ten days prior to the meeting, and in case of special meetings the notice shall state the purposes for which it is called, but the bylaws may require that all notices shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates.

History: L. 1937, ch. 2, § 12; C. 1943, 2-0-30.

### 3-1-13. Directors.

(I) The business of the association shall be managed by a board of not less than three directors; at least two-thirds of the directors shall be members of the association, or officers, directors or members of a member association. A director shall hold office for the term for which he was named or elected and until his successor is elected and qualified.

#### First Directors.

(II) The names of the first directors shall be stated in the articles. Their successors shall be elected by the members at the first meeting of the members held after the incorporation of the association.

#### Provisions Concerning, in Articles and Bylaws.

(III) The number, qualifications, terms of office, manner of election, time and place of meeting, and the powers and duties of the directors may, subject to the provisions of this act, be prescribed by the articles or bylaws; Except as otherwise prescribed in the articles or bylaws:

(a) A director shall be elected for a term of one year.

(b) Vacancies in the board, other than by expiration of term, shall be filled by the remaining members of the board, unless the bylaws provide for the election of directors by districts, in which case the board shall call a special meeting of the members in the district to elect a person qualified to fill the vacancy. A director elected by the remaining members of the board shall serve until his successor is elected by the members at the next annual meeting of the members or at any special meeting called and held prior thereto.

#### Districts, Provision for in Bylaws.

(IV) The bylaws may provide, if not restricted by the articles, that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify, or vest in the board of directors authority to determine, the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be



ratified by the next regular meeting of the association or may be considered as a final election.

#### Executive Committee.

(V) The bylaws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board subject to its general direction and control.

**History:** L. 1937, ch. 2, § 13; C. 1943, 2-0-31.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations §§ 33, 35.

**C.J.S.** — 3 C.J.S Agriculture §§ 143, 144.  
**Key Numbers.** — Agriculture ⇐ 6.

### 3-1-14. Removal of directors.

Any member may ask for the removal of a director by filing charges with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and the association may remove the director by a majority vote of the members voting thereon. The director whose removal is requested shall be served with a copy of the charges not less than ten days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence; and the persons requesting the removal shall have the same opportunity. In case the bylaws provide for election of directors by districts, then the petition for removal of a director must be signed by twenty per centum of the members residing in the district from which he was elected. The board must call a special meeting of the members residing in that district to consider the removal of the director; and by a majority vote of the members of that district voting thereon the director in question shall be removed from office.

**History:** L. 1937, ch. 2, § 14; C. 1943, 2-0-32.

### 3-1-15. Officers.

The board shall elect a president, a secretary and a treasurer, and may elect one or more vice-presidents, and such other officers as may be authorized in the bylaws. Unless the articles otherwise specifically provide, the president and at least one of the vice-presidents must be directors, but a vice-president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice-president, secretary and treasurer may be combined in one person.

**History:** L. 1937, ch. 2, § 15; C. 1943, 2-0-33.

### 3-1-16. Removal of officer.

Any member may bring charges of misconduct or incompetency against an officer by filing them with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the officer in question. The directors shall vote upon the removal of the officer at the first meeting of the board held after the hearing on the charges, and the officer may be removed by a majority vote, notwithstanding any contract the officer may have with the association, which shall terminate upon his removal, anything in the contract to the contrary notwithstanding. The officer against whom such charges are made shall be served with a copy of the charges not less than ten days prior to the meeting, and shall have an opportunity at the meeting to be heard in person and by counsel, and to present evidence, and the persons making the charges shall have the same opportunity.

History: L. 1937, ch. 2, § 16; C. 1943, 2-0-34.

### 3-1-17. Contracts with association.

(I) The bylaws may require members to execute contracts with the association in which the members agree to patronize the facilities created by the association, and to sell all or a specified part of their products to or through it, or to buy all or a specified part of their supplies from or through the association or any facilities created by it. If the members contract to sell through the association, the fact that for certain purposes the relation between the association and its members may be one of agency shall not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject matter of the contract. Such title shall pass to the association upon delivery of the product, or at any other time specified in the contract. If the period of the contract exceeds three years, the bylaws and the contracts executed thereunder shall specify a reasonable period, not less than ten days in each year, after the third year, during which the member, by giving to the association such reasonable notice as the association may prescribe, may withdraw from the association; provided, that if the bylaws or contracts executed hereunder so specify, a member may not withdraw from the association while indebted thereto. In the absence of such a withdrawal provision, a member may withdraw at any time after three years.

#### Damages for Breach.

(II) The contract may fix, as liquidated damages, which shall not be regarded as penalties, specific sums to be paid by the members to the association upon the breach of any provision of the contract regarding the use of any facilities of the association or the sale, delivery, handling, or withholding of products; and may further provide that the member who breaks his contract shall pay all costs, including premiums for bonds, and reasonable attorney's fees, to be fixed by the court, in case the association prevails in any action upon the contract.

#### Equitable Relief.

(III) A court of competent jurisdiction may grant an injunction to prevent the breach or further breach of the contract by a member and may decree

specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and a bond in such form and amount as may be approved by the court, the court may grant a temporary restraining order or preliminary injunction against the member.

**Remedy Not Exclusive.**

(IV) No remedy, either legal or equitable, herein provided for, shall be exclusive, but the association may avail itself of any and all such remedies, at the same or different times, in any action or proceeding.

**Landowners Presumed to Control Delivery.**

(V) In any action upon such marketing contracts, it shall be conclusively presumed that a landowner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner or landlord or lessor of such a marketing contract; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landowner, landlord, or lessor.

**Filing Contract.**

(VI) The association may file contracts to sell agricultural products to or through the association in the office of the county recorder of the county in which the products are produced. If the association has uniform contracts with more than one member in any county, it may, in lieu of filing the original contracts, file the affidavit of its president, vice president or secretary, containing or having attached thereto:

(a) A true copy of the uniform contract entered into with its members producing such product in that county;

(b) The names of the members who have executed such contract and a description of the land on which the product is produced, if such description is contained in the contract. The association may file from time to time thereafter affidavits containing revised or supplementary lists of the members producing such product in that county without setting forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof. All affidavits filed under this section shall state in substance that they are filed pursuant to the provisions of this section. The county recorder shall file such affidavits and make endorsements thereon and record and make entries thereof in the same manner as is required by law in the case of chattel mortgages, and he shall compile and make available for public inspection a convenient index containing the names of all signers of such contracts, and collect for his services hereunder the same fees as for chattel mortgages. The filing of any such contract, or such affidavit, shall constitute constructive notice of the contents thereof, and of the association's title or right to the product embraced in such contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons dealing with the members with reference to such product. No title, right, or lien of any kind shall be acquired to or on the product thereafter except through the association or with its consent, or subject to its rights; and the association may recover the possession of such property from any and all subsequent purchasers, encumbrancers,

and creditors, and those claiming under them, in whose possession the same may be found, by any appropriate action for the recovery of personal property, and it may have relief by injunction and for damages.

**History:** L. 1937, ch. 2, § 17; C. 1943, 2-0-35.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations §§ 64 to 66, 150, 151, 186 to 188, 191 to 197.

**C.J.S.** — 3 C.J.S. Agriculture §§ 146 to 150, 157.

**Key Numbers.** — Agriculture ⇌ 6.

### 3-1-18. Inducing breach of contract — False reports — Penalty.

Any person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association to violate his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars for each such offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars for each such offense.

**History:** L. 1937, ch. 2, § 18; C. 1943, 2-0-36.

**Cross-References.** — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations § 207.

**C.J.S.** — 3 C.J.S. Agriculture § 158.

**Key Numbers.** — Agriculture ⇌ 6.

### 3-1-19. Association not in restraint of trade — Right to disseminate information.

(a) No association complying with the terms hereof shall be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreement authorized in this act, be construed as an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

(b) An association may acquire, exchange, interpret and disseminate to its members, to other cooperative associations, and otherwise, past, present, and prospective crop, market, statistical, economic, and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

(c) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the

most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

**History:** L. 1937, ch. 2, § 19; C. 1943, 2-0-37.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

**Cross-References.** — Restraint of trade exemptions, § 76-10-915.

Trusts and combinations prohibited, Utah Const., Art. XII, Sec. 20.

Unfair Practices Act, exemption from, § 13-5-4.

#### NOTES TO DECISIONS

##### Control of prices prohibited.

An association of milk producers could work to persuade its own members to use only its transportation services in order to further legitimate business interests, but if its objective was to enable it to fix minimum prices for milk, such activity would be in violation of statutory and constitutional provisions. *Gammon v. Federated Milk Producers Ass'n*, 14 Utah 2d 291, 383 P.2d 402 (1963).

In action against an association for damages

for malicious interference with trucker's exclusive contract rights to haul milk for the association's members, even though it was determined that trucker had no contractual rights, evidence of actual interference with trucker's business presented jury question as to whether the association had unlawfully interfered with trucker's business in violation of the statute and the Constitution. *Gammon v. Federated Milk Producers Ass'n*, 14 Utah 2d 291, 383 P.2d 402 (1963).

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations § 65.

**C.J.S.** — 58 C.J.S. Monopolies § 78.

**Key Numbers.** — Agriculture ☞ 6.

### 3-1-20. Voluntary dissolution — Proceedings.

(I) (a) The members of an association may at any regular meeting, or any special meeting called for the purpose, upon thirty days notice of the time, place and object of the meeting having been given as prescribed in the bylaws, by a vote of two-thirds of the members voting thereon, discontinue the operations of the association and direct that the association be dissolved and its affairs settled. The meeting shall by like vote designate a committee of three members who, as trustees on behalf of the association and within the time fixed in their designation or any extension thereof, shall liquidate its assets, pay its debts, and divide any surplus among the members in accordance with their respective rights and interests under their contracts with the association and the articles and bylaws. Upon final settlement by such trustees, the association shall be deemed dissolved and shall cease to exist. The trustee shall make a report in duplicate of the proceedings had under this section, which shall be signed and sworn to and filed as required for the filing of the articles of incorporation.

(b) The trustees may bring and defend all actions by them deemed necessary to protect and enforce the rights of the association.

(c) Any vacancies in the trusteeship may be filled by the remaining trustees.

(II) In the case of an association dissolving pursuant to this section, the district court of the county of the principal place of business of the association,



upon the petition of the trustees or a majority of them, or in a proper case upon the petition of a creditor or member, or upon the petition of the attorney general, upon notice to all of the trustees and to such other interested persons as the court may specify, from time to time may order and adjudge in respect to the following matters:

(a) The giving of notice by publication or otherwise of the time and place for the presentation of all claims and demands against the association, which notice may require all creditors of and claimants against the association to present in writing and in detail at the place specified their respective accounts and demands to the trustees by a day therein specified, which shall not be less than forty days from the service or first publication of such notice.

(b) The payment or satisfaction in whole or in part of claims and demands against the association, or the retention of money for such purpose.

(c) The presentation and filing of intermediate and final accounts of the trustees, the hearing thereon, the allowance or disallowance thereof, and the discharge of the trustees, or any of them from their duties and liabilities.

(d) The administration of any trust or the disposition of any property held in trust by or for the association.

(e) The sale and disposition of any remaining property of the association and the distribution or division of such property or its proceeds among the members or persons entitled thereto.

(f) Such matters as justice may require.

(III) All orders and judgments shall be binding upon the association, its property and assets, its trustees, members, creditors and all claimants against it.

(IV) This section shall apply to all associations heretofore or hereafter incorporated in this state.

**History:** L. 1937, ch. 2, § 20; C. 1943, 2-0-38; L. 1977, ch. 7, § 4.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations §§ 43 to 45.

**C.J.S.** — 3 C.J.S. Agriculture § 156.  
**Key Numbers.** — Agriculture ☞ 6.

### 3-1-21. Existing associations continued under chapter.

(a) This act shall be applicable to any existing association formed under any law of this state providing for the incorporation of agricultural cooperative associations, for a purpose for which an association may be formed under this act, and particularly to associations formed under the Agricultural Cooperative Association Act, and all such associations shall have and may exercise and enjoy all the rights, privileges, authority, powers, and capacity heretofore granted, and all such associations shall have and may also exercise and enjoy all the rights, privileges, authority, powers, and capacity granted or afforded under and in pursuance of this act to the same extent and effect as though organized hereunder.

(b) Any cooperative association heretofore organized by producers of agricultural products under Chapter 1, Title 3, Agricultural Cooperative Associations, for purposes in this act provided, may bring itself under and within the terms of this act as if organized hereunder and may thereafter operate in pursuance of the terms hereof, and may exercise and enjoy all the rights, privileges, authority, powers, and capacity afforded and provided for under the terms of this act, by filing with the Division of Corporations and Commercial Code, a sworn statement signed by the president and secretary of such association, to the effect that by resolution of the board of directors of such association duly adopted, such association has elected to bring itself within the terms of this act.

**History:** L. 1937, ch. 2, § 21; C. 1943, 2-0-39; L. 1977, ch. 7, § 5; 1984, ch. 66, § 3.

**Amendment Notes.** — The 1984 amendment substituted "Chapter 1, Title 3, Agricultural Cooperative Associations" in Subsection (b) for "the terms of Chapter VI, Title 18, Re-

vised Statutes of Utah, 1933"; and substituted "Division of Corporations and Commercial Code" for "secretary of state" in Subsection (b).

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

### 3-1-22. Accrued rights not affected by chapter.

This act shall not impair nor affect any act, offense committed, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if this act had not been passed.

**History:** L. 1937, ch. 2, § 22; C. 1943, 2-0-40.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

### 3-1-23. Use of term "cooperative" limited.

No person, firm, corporation, or association, domestic or foreign, hereafter commencing business in this state shall use the word "cooperative" as a part of its corporate or business name unless it has complied with the provisions of this act or some other statute of this state relating to cooperative associations. A foreign association organized under and complying with the cooperative law of the state of such association's creation shall be entitled to use the term "cooperative" in this state if it has obtained the privilege of doing business in this state.

**History:** L. 1937, ch. 2, § 23; C. 1943, 2-0-41.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

#### COLLATERAL REFERENCES

**Brigham Young Law Review.** — Utah's Business Name Statutes: "An Open Invitation to Litigation," 1983 B.Y.U. L. Rev. 795.

**Am. Jur. 2d.** — 18 Am. Jur. 2d Cooperative Associations § 28.

**Key Numbers.** — Agriculture ⇌ 6.



### 3-1-24. Eligible foreign corporations may operate under chapter.

A foreign corporation that can qualify as an association, as defined in § 3-1-2, may be authorized to do business in this state under the provisions of this act by complying with the laws relating to foreign corporations doing business in the state. It shall pay the same fees and charges as domestic associations. Upon such compliance it shall have all the rights and privileges of like domestic associations.

**History:** L. 1937, ch. 2, § 24; C. 1943, 2-0-42; L. 1977, ch. 7, § 6.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

### 3-1-25. Filing of annual reports.

Domestic associations and foreign associations admitted to do business in this state shall file an annual report in accordance with §§ 16-6-97 and 16-6-98.

**History:** L. 1937, ch. 2, § 25; C. 1943, 2-0-43; L. 1977, ch. 7, § 7; 1987, ch. 66, § 1.  
**Amendment Notes.** — The 1987 amend-

ment, effective March 10, 1987, deleted the reference to § 16-6-99 at the end of the section.

### 3-1-26. Separability clause.

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**History:** L. 1937, ch. 2, § 26; C. 1943, 2-0-44.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

#### COLLATERAL REFERENCES

C.J.S. — 82 C.J.S. Statutes § 94.

**Key Numbers.** — Statutes ⇌ 64(1), (2).

### 3-1-27. Construction of chapter.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** L. 1937, ch. 2, § 27; C. 1943, 2-0-45.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

**3-1-28. Short title.**

This act may be cited as the Uniform Agricultural Cooperative Association Act.

**History:** L. 1937, ch. 2, § 28; C. 1943, 2-0-46.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

**3-1-29. Inconsistent acts repealed — Existing associations continued.**

All acts and parts of acts which are inconsistent with the provisions of this act are repealed. It is intended by the enactment of this measure to continue in good standing all existing associations organized under similar acts heretofore existing, and in no way to detract from or interfere with the continued operations of such associations, and it is intended that this act shall supersede Title 2, Revised Statutes of Utah, 1933, in the interest of the further aid, encouragement, strengthening, and stabilizing of all such associations.

**History:** L. 1937, ch. 2, § 29; C. 1943, 2-0-47.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-1.

**3-1-30. Merger — Authorization for merger with other associations or corporations — Laws governing surviving corporation.**

Any agricultural cooperative association may merge with one or more agricultural cooperative associations, one or more domestic corporations governed by the Utah Business Corporation Act or one or more domestic corporations governed by the Utah Nonprofit Corporation and Cooperative Association Act or may merge with any combination of such associations or corporations into one of such associations or corporations, a party to the merger, pursuant to a plan of merger approved in the manner provided by this act, the surviving corporation to be governed by either the Uniform Agricultural Cooperative Association Act or by the Utah Nonprofit Corporation and Cooperative Association Act.

**History:** C. 1953, 3-1-30, enacted by L. 1965, ch. 2, § 1.

Utah Nonprofit Corporation and Cooperative Association Act, §§ 16-6-18 to 16-6-111.

**Cross-References.** — Uniform Agricultural Cooperative Association Act, §§ 3-1-1 to 3-1-29.

## COLLATERAL REFERENCES

**C.J.S.** — 3 C.J.S. Agriculture § 139.

**Key Numbers.** — Agriculture ⇌ 6.

### 3-1-31. Merger — Contents and approval of plan of merger.

The board of directors, board of trustees or other governing board by whatever name designated, of each party to the merger shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) the name of the associations and corporations proposing to merge, which are sometimes designated in this act collectively as parties to the merger and singly as a party to the merger, and the name of the association or corporation into which they propose to merge, which is designated in this act as the surviving corporation;

(2) the terms and conditions of the proposed merger;

(3) the manner and basis of converting the stock or shares, if any, of each party to the merger, into stock, shares or other securities or obligations of the surviving corporation;

(4) the manner and basis of converting membership interests, if any, of each party to the merger into membership interests, stock, shares or other securities or obligations of the surviving corporation;

(5) the manner and basis of converting any certificates of interest, patronage refund certificates or other interest as members, patrons or otherwise by whatever name designated in any fund, capital investment, savings or reserve of each party to the merger into stock, shares or other securities or obligations of or certificates of interest, patronage refund certificates, or other interests in any fund, capital investment, savings or reserve of the surviving corporation, including any changes to be made in the time and manner of payment of any such certificates or interests;

(6) a statement electing whether the surviving corporation shall be governed by the Uniform Agricultural Cooperative Association Act or by the Utah Nonprofit Corporation and Cooperative Association Act. The surviving corporation shall not be governed by the Utah Business Corporation Act;

(7) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger, including such changes required by the law under which the surviving corporation is to be governed; and

(8) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

**History:** C. 1953, 3-1-31, enacted by L. 1965, ch. 2, § 1.

**Meaning of "this act".** — The term "this act," referred to in this section, probably refers

to this chapter. See the note under the same catchline following § 3-1-1, regarding the enactment of much of this chapter by Laws 1937, Chapter 2.

### 3-1-32. Merger — Notice to members and shareholders of meeting to vote on plan of merger.

The board of directors, board of trustees or other governing board by whatever name designated of each party to the merger, upon approving such plan of merger shall, by resolution, direct that the plan be submitted to a vote at a meeting of members or shareholders, or members and shareholders, as the case may be, which may be either an annual or special meeting. Written or printed notice stating the place, day and hour of the meeting and, whether the

meeting be an annual or a special meeting, that the purpose or one of the purposes of the meeting is to consider and vote upon the plan of merger naming the associations and corporations parties to the merger, shall be delivered not less than twenty nor more than ninety days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary of the association or corporation, (1) to each member of record, whether or not entitled to vote under the articles of incorporation or bylaws, of each party to the merger having members and (2) to each shareholder of record, whether or not entitled to vote under the articles of incorporation or bylaws, of each party to the merger having shareholders or stockholders. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member or shareholder at his address as it appears on the membership books or stock transfer books, as the case may be, of the association or corporation, with postage thereon prepaid. A copy or a summary of the plan of merger shall be included in or enclosed with such notice and, if a summary only is given, the notice shall state that a copy will be furnished to any member or shareholder upon request and without charge.

History: C. 1953, 3-1-32, enacted by L. 1965, ch. 2, § 1.

### **3-1-33. Merger — Determination of members and shareholders entitled to notice of or to vote on plan of merger.**

For the purpose of determining members and shareholders entitled to notice of and to vote at such meeting or any adjournment thereof, the board of directors, board of trustees or other governing board, by whatever name designated, of each party to the merger, may fix in advance a date as the record date for any such determination of members and shareholders, such date in any case to be not more than ninety days and not less than twenty days prior to the date of the meeting. If no record date is fixed for determination of members and shareholders entitled to notice of or to vote at the meeting, the date on which notice of the meeting is mailed shall be the record date for such determination of members and shareholders. When a determination of members or shareholders entitled to vote at the meeting has been made as provided in this section, such determination shall apply to any adjournment thereof.

For the purposes of this act, persons holding certificates of interests, patronage refund certificates or other interest by whatever name designated as members, patrons or otherwise in any fund, capital investment, savings or reserve of any party to the merger shall not be considered members, shareholders or stockholders if the aggregate of such holdings have a stated or face value of less than \$50, unless designated a member, shareholder or stockholder by the articles of incorporation of the association or corporation in which they have such holdings; but, if the aggregate of such holdings have a stated or face value of \$50 or more, such persons shall be considered members even though not otherwise designated a member or shareholder or stockholder by the articles of incorporation or bylaws of the association or corporation in which they have such holdings and shall be entitled to all rights of members under this act.

**History:** C. 1953, 3-1-33, enacted by L. 1965, ch. 2, § 1.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-31.

### **3-1-34. Merger — Quorum at meeting to vote on plan of merger.**

Notwithstanding any different provision in the law governing or in the articles of incorporation or bylaws of an association or corporation a party to the merger, the members, present in person or by proxy or by delegate, of each association or corporation a party to the merger having members and the shareholders, present in person or by proxy or by delegate, of each association or corporation a party to the merger having stock or shares shall constitute a quorum at the meeting called to consider and vote upon the plan of merger unless the plan of merger requires a greater number to constitute a quorum at such meeting.

**History:** C. 1953, 3-1-34, enacted by L. 1965, ch. 2, § 1.

### **3-1-35. Merger — Procedure at meeting to vote on plan of merger — Abandonment of merger prior to filing articles.**

At each such meeting, a vote of the members of each party to the merger having members and a vote of the shareholders of each party to the merger having stock or shares shall be taken on the proposed plan of merger. Each member of each party to the merger having members and each outstanding share of each party to the merger having stock or shareholders shall be entitled to vote on the proposed plan of merger, whether or not such member or share has voting rights under the provisions of the articles of incorporation or bylaws of such association or corporation, except that if the articles of incorporation or bylaws of any party to the merger provide for the election by members or shareholders or any class or classes thereof at district meetings of delegates to vote at annual or special meetings of the association or corporation, such procedures shall be followed for such association or corporation as to such class or classes and the vote of such delegates at the meeting where the plan of merger is voted on shall be counted in the same way and entitled to the same weight as a vote of such delegates at any other meeting of such association or corporation. Members or shareholders or delegates of members or shareholders may vote in person or by written proxy. The plan of merger shall be approved upon receiving the affirmative vote of at least a majority of the members or delegates of members voting thereon and of at least a majority of the holders or delegates of holders of the outstanding shares of each such association or corporation voting thereon.

After such approval by a vote of the members and shareholders of each party to the merger and at any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.



History: C. 1953, 3-1-35, enacted by L. 1965, ch. 2, § 1.

### 3-1-36. Merger — Articles of merger — Execution, contents, and filing of articles — Issuance of certificate of merger — Fees.

(1) Upon such approval, articles of merger shall be executed in duplicate by each party to the merger by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each association and corporation signing such articles and shall set forth:

(a) the plan of merger;

(b) as to each party to the merger, a statement of the date of the meeting at which the plan of merger was considered and voted upon, that a quorum was present at such meeting and that notice of such meeting was given to all members and shareholders entitled to notice thereof;

(c) as to each party to the merger, the number of members entitled to vote thereon and the number of shares outstanding entitled to vote thereon; and

(d) as to each party to the merger, the number of members and delegates of members who voted for and against such plan, respectively, and the number of shares voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger shall be delivered to the Division of Corporations and Commercial Code and a fee established pursuant to Subsection 63-38-3(2) shall be paid. If the Division of Corporations and Commercial Code finds that such articles conform to law it shall, when all fees have been paid as in this act prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in its office; and

(c) issue a certificate of merger to which it shall affix the other duplicate original and return the same to the surviving corporation or its representative.

History: C. 1953, 3-1-36, enacted by L. 1965, ch. 2, § 1; L. 1977, ch. 7, § 8; 1984, ch. 66, § 4; 1984 (2nd S.S.), ch. 15, § 4.

Amendment Notes. — The 1984 amendment substituted references to "Division of Corporations and Commercial Code" for "secretary of state."

The 1984 (2nd S.S.) amendment, effective July 1, 1985, substituted "a fee established pursuant to Subsection 63-38-3(2)" in Subsection (2) for "its fee in the amount of \$25"; and made minor changes in phraseology and punctuation.

### 3-1-37. Merger — Effect of merger.

Upon the issuance of the certificate of merger by the Division of Corporations and Commercial Code, the merger shall be effected.

When such merger has been effected:

(1) The several associations or corporations parties to the plan of merger shall be a single corporation and that corporation designated in the plan of merger as the surviving corporation.

(2) The separate existence of all associations and corporations parties to the merger, except the surviving corporation, shall cease.

(3) Such surviving corporation shall have all of the rights, privileges, immunities, and powers and be subject to all the duties and liabilities of a corporation organized under the Uniform Agricultural Cooperative Association Act or under the Utah Nonprofit Corporation and Cooperative Association Act, whichever act is so designated in the plan of merger.

(4) Such surviving corporation shall thereupon and thereafter possess all rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging associations and corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the associations and corporations so merged, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or any interest therein vested in any of such associations or corporations shall not revert or be in any way impaired by reason of such merger.

(5) Such surviving corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the associations and corporations so merged; and any claim existing or action or proceeding pending by or against any of such associations and corporations may be prosecuted as if such merger had not taken place, or such surviving corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such association or corporation shall be impaired by such merger.

(6) The articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in the articles of incorporation are stated in the plan of merger.

**History:** C. 1953, 3-1-37, enacted by L. 1965, ch. 2, § 1; L. 1984, ch. 66, § 5.

**Amendment Notes.** — The 1984 amend-

ment substituted "Division of Corporations and Commercial Code" for "secretary of state" in the first paragraph.

### **3-1-38. Merger — Procedure for and effect of merger of foreign and domestic corporations or associations.**

One or more foreign corporations or associations and: either one or more domestic associations; or one or more domestic associations and one or more domestic corporations may be merged in the following manner, if such merger is permitted by the laws of the state under which each such foreign corporation is organized and if the surviving corporation, if a foreign corporation, will be governed by laws similar to the Uniform Agricultural Cooperative Association Act or the Utah Nonprofit Corporation and Cooperative Association Act:

(1) Each domestic association and corporation shall comply with the provisions of this act with respect to the merger of domestic associations and corporations and each foreign association or corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving corporation is to be governed by the laws of any state other than this state, it shall comply with the provisions of the laws of this state with respect to foreign corporations if it is to transact busi-



ness in this state, and in every case it shall file with the Division of Corporations and Commercial Code of this state:

(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic association or corporation which is a party to the merger and in any proceeding for the enforcement of the rights of a dissenting member or shareholder of any such domestic association or corporation against the surviving corporation;

(b) an irrevocable appointment of the director of the Division of Corporations and Commercial Code of this state as its agent to accept service of process in any such proceeding; and

(c) an agreement that it will promptly pay to the dissenting members and shareholders of any such domestic association or corporation the amount, if any, to which they shall be entitled under the provisions of this act with respect to the rights of dissenting members and shareholders.

The effect of such merger shall be the same as in the case of the merger of domestic associations and corporations, if the surviving corporation is to be governed by the laws of this state. If the surviving corporation is to be governed by the laws of any state other than this state, the effect of such merger shall be the same as in the case of the merger of domestic associations or corporations except insofar as the laws of such other state provide otherwise.

At any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

**History:** C. 1953, 3-1-38, enacted by L. 1965, ch. 2, § 1; L. 1984, ch. 66, § 6.

**Amendment Notes.** — The 1984 amendment substituted "Division of Corporations and Commercial Code" for "secretary of state" in

Subsection (2); and substituted "director of the Division of Corporations and Commercial Code" for "secretary of state" in Subsection (2)(b).

### **3-1-39. Merger — Dissent from plan by member or shareholder — Dissent as to less than all of memberships or shares.**

Any member or shareholder of a domestic association or corporation shall have the right to dissent from any plan of merger to which the association or corporation is a party in accordance with the procedure and at the times set forth in this act. A member or shareholder may dissent as to less than all of the memberships or shares registered in his name and, in that event, his rights shall be determined as if the membership or shares as to which he has dissented and his other memberships or shares were registered in the names of different members or shareholders.

**History:** C. 1953, 3-1-39, enacted by L. 1965, ch. 2, § 1.

**Meaning of "this act".** — See the note under the same catchline following § 3-1-31.

**3-1-40. Merger — Dissent from plan by member or shareholder — Filing objection to plan — Demand for payment for membership or shares and procedure for payment.**

Any member or shareholder electing to exercise such right of dissent shall file with the association or corporation, prior to or at the meeting at which the plan of merger is submitted to a vote, a written objection to the plan of merger. If the plan of merger be approved by the required vote and if, but only if, such member or shareholder shall not have voted in favor thereof, such member or shareholder may, within ten days after the date on which vote was taken, make written demand on the surviving corporation for payment of the fair value of the interest of such member or for payment of the fair value of such shareholder's shares, as the case may be, and, if the merger is effected, such corporation shall pay to such member or shareholder, upon surrender of any certificate or certificates representing such membership or such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the plan of merger, excluding any appreciation or depreciation in anticipation of such merger. Any member or shareholder failing to make such written objection prior to or at such meeting and failing to make such demand within the ten-day period shall be bound by the terms of the plan of merger. Any member or shareholder making such objection and demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a member or shareholder.

No such demand may be withdrawn unless the surviving corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the merger shall be abandoned or rescinded or shall not be effected or the members or shareholders shall revoke the authority to effect such merger or if on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding memberships and shares of the other associations and corporations that are parties to the merger or if no demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section or if a court of competent jurisdiction shall determine that such member or shareholder is not entitled to the relief provided by this section, then the rights of such member or shareholder to be paid the fair value of his membership or of his shares shall cease and his status as a member or shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

Within ten days after such merger is effected, the surviving corporation, domestic or foreign, shall give written notice thereof to each dissenting member or shareholder who has made objection and demand as herein provided, and shall make a written offer to each such member and shareholder to pay for such membership and for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the association or corporation, the membership or shares of which the dissenting member or shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such association or corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which the merger was effected, the fair value of such memberships or such shares is agreed upon between any such dissenting member or shareholder and the surviving corporation, payment therefor shall be made within ninety days after the date on which the merger was effected, upon surrender of the certificate or certificates, if any, representing such memberships or shares. Upon payment of the agreed value, the dissenting member or shareholder shall cease to have any interest in such memberships or in such shares.

If within such period of thirty days a dissenting member or shareholder and the surviving corporation do not agree, then the surviving corporation, within thirty days after receipt of written demand from any dissenting member or shareholder given within sixty days after the date on which the merger was effected shall, or at its election at any time within such period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the surviving corporation is located, or if such corporation has no registered office, in the county where the principal office and place of business in this state of such corporation is located, praying that the fair value of such memberships or shares, as the case may be, be found and determined. If the surviving corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic association or corporation was last located, or if the domestic association or corporation had no registered office, in the county where the principal office and place of business in this state of such association or corporation was last located. If the surviving corporation shall fail to institute the proceeding as herein provided, any dissenting member or shareholder may do so in the name of the corporation. All dissenting members and shareholders, wherever residing, shall be made parties to the proceeding as an action against their memberships or shares quasi in rem. A copy of the petition shall be served on each dissenting member and shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting member and shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All members and shareholders who are parties to the proceeding shall be entitled to judgment against the surviving corporation for the amount of the fair value of their memberships or shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the surviving corporation of the certificate or certificates, if any, representing such memberships or shares. Upon payment of the judgment, the dissenting member shall cease to be a member and the dissenting shareholder shall cease to have any interest in such shares.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the plan of merger to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the surviving corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting members or share-

holders who are parties to the proceeding to whom the surviving corporation shall have made an offer to pay for the memberships or for the shares if the court shall find that the action of such members or shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but, if the fair value of the shares as determined materially exceeds the amount which the surviving corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any member or shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the member or shareholder in the proceeding.

Within twenty days after demanding payment for his membership or for his shares, each member and shareholder demanding payment shall submit the certificate or certificates, if any, representing his memberships or his shares to the association or corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the surviving corporation, terminate his rights under this section unless a court of competent jurisdiction for good and sufficient cause shown, shall otherwise direct. If memberships or shares represented by a certificate on which notation has been made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such membership or shares, and a transferee of such membership or shares shall acquire by such transfer no rights in the surviving corporation other than those which the original dissenting member or shareholder had after making demand for payment of the fair value thereof.

Memberships acquired by the surviving corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor as in this section provided, shall be canceled. Shares acquired by a surviving corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except as otherwise provided in the plan of merger.

History: C. 1953, 3-1-40, enacted by L. 1965, ch. 2, § 1.

### **3-1-41. Merger — Domestic or foreign corporations or associations — Plan of merger — Articles of merger — Certificate of merger.**

(1) A Utah cooperative association owning 90% of the outstanding shares of each class of a foreign or domestic corporation or association may merge such other corporation or association into itself without the approval of the shareholders or members of either corporation or association. The governing board shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation or association and the name of the corporation or association owning 90% or more of its shares, which is hereafter designated as the surviving corporation or association; and

(b) the manner and basis for converting each class of shares of the subsidiary corporation or association into shares, obligations, or other



securities of the surviving corporation or association, or of any other corporation or association, in whole or in part, into cash or other property.

A copy of the plan of merger shall be mailed to each record member or shareholder of the subsidiary corporation or association.

(2) Articles of merger shall be executed in triplicate by the president or vice-president and the secretary or an assistant secretary of the surviving corporation or association and verified by one of its officers.

The articles of merger shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation or association and the number of such shares of each class owned by the surviving corporation or association; and

(c) the date a copy of the plan of merger was mailed to shareholders or members of the subsidiary corporation or association.

(3) Triplicate originals of the articles of merger shall be delivered to the Division of Corporations and Commercial Code on the 30th day after mailing a copy of the plan to shareholders or members. If that division finds such articles conform to law and that all fees prescribed by this act have been paid, it shall:

(a) endorse on each of said triplicate originals the word "filed", together with the month, date, and year of filing;

(b) file one of the triplicate originals with the Division of Corporations and Commercial Code and forward another triplicate original to the state Department of Agriculture; and

(c) issue a certificate of merger with the remaining triplicate original affixed.

The certificate of merger, together with a triplicate original of the articles of merger affixed by the Division of Corporations and Commercial Code, shall be returned to the surviving corporation or association or its representative.

(4) The merger of a foreign corporation or association into a Utah cooperative association shall conform to the laws of the state under which each such foreign corporation or association is organized.

**History:** L. 1977, ch. 13, § 1; 1984, ch. 66, § 7.

**Amendment Notes.** — The 1984 amendment substituted references to the Division of

Corporations and Commercial Code for references to the secretary of state throughout the section.